

SUPREME COURT, U. S.
SEP 11 1974
MICHAEL RODAK, JR., C

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1935

JAMES CHARLES PAYNE, a minor by and through his next friend and father, WALTER PAYNE, and WALTER PAYNE, individually,

Petitioners,

vs.

CITY OF FORT LAUDERDALE, a municipal corporation, and LEO RICHARD PAULIN,

Respondents.

REPLY AND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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PREFACE

This Reply and Supplemental Brief is filed by Petitioners, JAMES CHARLES PAYNE, a minor by and through his next friend and father, WALTER PAYNE, and WALTER PAYNE, individually, pursuant to Rule 24, United States Supreme Court Rules, in support of Petitioners' Petition for a Writ of Certiorari.

ARGUMENT

I

The Exclusion of Persons 18, 19 and 20 Years of Age from Jury Venires and the Requiring of Individuals Over the Age of 65 Waiving Personal Exemption Is in Conflict with the Fourteenth Amendment to the United States Constitution.

Respondent places great reliance on a prior sex discrimination decision of the United States Supreme Court holding constitutional the procedure of requiring women to register for jury service as a pre-condition for the eligibility to participate on a Jury. However, Petitioners would call to this Court's attention the case of *Healy* v. *Edwards*, 42 LW 1041, wherein a United States District Court struck down Louisiana's jury sex classification statute and constitutional provisions. Under said statute and provisions, women could serve on juries only by filing a written declaration of desire to do so, just as the challenged Florida statute in the instant cause, requires an affirmative declaration of individuals over the age of 65 of their desire to participate in jury service.

As this Court is aware, the decision in the case of *Healy* v. *Edwards* is now before it for ultimate disposition. Just as the time has come for the Court to abandon decisions grounded on invalid, outmoded conceptions of the role of women in society, Petitioners submit that the time has come to abandon any similar classification based on age, as irrational and unconstitutionally invalid. It is significant to note that without making an independent affirmative declaration of their desire to do so, certain members of this United States Supreme Court could not have served on a jury panel in the instant cause, since they are

over the age of 65. There being no relationship between a person's age over the age of 65, and his or her potential contributions to society, needs or abilities, such classifications are irrational and cannot be supported by vague notions of "courtesy" as urged by Respondents.

II

The United States Supreme Court Should Reverse This Cause and Remand It for a New Trial in Accordance with the Doctrine of Comparative Negligence Adopted by the Florida Supreme Court Subsequent to the Trial of This Cause.

The Trial of this negligence action was terminated on February 25, 1972, by the entry of a Judgment on Jury Verdicts in favor of Respondents and against the Petitioners. By opinion dated July 10, 1973, however, the Supreme Court of the State of Florida in the case of *Hoffman* v. *Jones*, Fla. 1973, 280 So. 2d 431, adopted the doctrine of comparative negligence under which a litigant's recovery would be reduced only in proportion to his own negligence and not eliminated altogether by any negligence which might be found to have contributed to his injuries. In so ruling, the Florida Supreme Court reversed controlling precedent of the law of the State of Florida set down by the Florida Supreme Court in *Louisville and Nashville Railroad Company* v. *Ynestra*, (1886) 21 Fla. 700, and justifiably relied upon by Counsel for Petitioners in prosecuting the negligence Action.

In *Hoffman* v. *Jones* the Supreme Court of Florida held that its opinion would be applicable to those cases in which Judgment had already been rendered if the applicability of the comparative negligence rule were raised during some stage of the litigation, and further, would be applicable to those cases on appeal in which the applicabil-

ity of the comparative negligence rule was made a question of appellate review. Accordingly, Petitioners submit that since the applicability of comparative negligence rule has been raised during a stage of the instant litigation, this Cause should be remanded to the Trial Court for a new Trial in light of the adoption by the State's highest Court of the doctrine on comparative negligence.

CONCLUSION

Based on the authorities and arguments cited herein, it is respectfully submitted that the Petition for Writ of Certiorari should be granted and/or this Cause remanded to the Trial Court for a new Trial in light of the Florida Supreme Court's adoption of a doctrine of comparative negligence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply and Supplemental Brief in Support of Petition for a Writ of Certiorari to the Supreme Court of the State of Florida has been mailed to FRANK E. MALONEY, ESQUIRE, Attorney for Respondent, American National Bank Building, Fort Lauderdale, Florida 33304 this 10th day of September, 1974.

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